

1 ANNETTE L. HAYES
2 United States Attorney
3 Western District of Washington
4 Kristin B. Johnson
5 Assistant United States Attorney
6 700 Stewart Street, Suite 5220
7 Seattle, WA 98101-1271
8 Telephone No. (206) 553-7970

9 UNITED STATES DISTRICT COURT
10 EASTERN DISTRICT OF WASHINGTON

11 MICHAEL SUBLIE,
12 Plaintiff,

13 v.

14 UNITED STATES OF AMERICA, et. al.,
15 Defendants.

No. C15-0266-SAB

**DEFENDANTS WENTZ AND
PHILLIPSON'S ANSWER**

16 COMES NOW the Defendants, Joshua Wentz and Matthew Phillipson, by and
17 through their counsel, Annette L. Hayes, United States Attorney for the Western District
18 of Washington, and Kristin B. Johnson, Assistant United States Attorney for said
19 District and in answer to Plaintiff's Complaint states as follows:
20
21

22 **I. PARTIES**

23 1.1 Defendants are currently without knowledge or information sufficient to
24 form a belief as to the allegations in paragraph 1.1 of Plaintiff's Complaint and
25 therefore deny the same pursuant to Rule 8(b) of the Federal Rules of Civil Procedure.
26
27
28

1 1.2 Defendants admit that Matthew Phillipson is a Park Ranger employed by
2 the NPS. Defendants deny the remaining allegations in paragraph 1.2 of Plaintiff's
3 Complaint.
4

5 1.3 Defendants admit the allegations in paragraph 1.3 of Plaintiff's
6 Complaint.
7

8 1.4 Defendants admit that on September 14, 2013, Matthew Phillipson and
9 Joshua Wentz were Park Rangers employed by the NPS and that the NPS is an agency
10 within the Department of the Interior. The remaining allegations in paragraph 1.4 of
11 Plaintiff's Complaint constitute conclusions of law to which no answer is required. To
12 the extent an answer is required Defendants deny said allegations and put Plaintiff to his
13 proof.
14

15 **II. JURISDICTION AND VENUE**

16 2.1 The allegations in paragraph 2.1 of Plaintiff's complaint are statements of
17 jurisdiction that contain legal conclusions to which no answer is required. To the extent
18 an answer is required Defendants deny said allegations and put Plaintiff to his proof.
19

20 2.2 The allegations in paragraph 2.2 of Plaintiff's complaint are statements of
21 jurisdiction that contain legal conclusions to which no answer is required. To the extent
22 an answer is required Defendants deny said allegations and put Plaintiff to his proof.
23

24 2.3 The allegations in paragraph 2.3 of Plaintiff's complaint are statements of
25 venue that contain legal conclusions to which no answer is required. To the extent an
26 answer is required Defendants deny said allegations and put Plaintiff to his proof.
27
28

III. ADMINISTRATIVE EXHAUSTION

3.1 Defendants restate and re-allege their responses to paragraphs 1.1 through 2.3 above.

3.2 Defendants are currently without knowledge or information sufficient to form a belief as to the allegations in paragraph 3.2 of Plaintiff's Complaint and therefore deny the same pursuant to Rule 8(b) of the Federal Rules of Civil Procedure.

IV. STATEMENT OF FACTS

4.1 Defendants restate and re-allege their responses to paragraphs 1.1 through 3.2 above.

4.2 Defendants are currently without knowledge or information sufficient to form a belief as to the allegations in paragraph 4.2 of Plaintiff's Complaint and therefore deny the same pursuant to Rule 8(b) of the Federal Rules of Civil Procedure.

4.3 Defendants are currently without knowledge or information sufficient to form a belief as to the allegations in paragraph 4.3 of Plaintiff's Complaint and therefore deny the same pursuant to Rule 8(b) of the Federal Rules of Civil Procedure.

4.4 Defendants admit that Rangers Wentz and Phillipson were on duty on September 14, 2013, and approached Mr. Sublie's houseboat in response to Mr. Sublie's violation of Park regulations and requested the violation cease. Defendants deny the remaining allegations in paragraph 4.4 of Plaintiff's Complaint.

4.5 Defendants admit that Rangers Wentz and Phillipson interacted with Mr. Sublie, Mr. Hartinger, and Mr. Riley while they were on Mr. Sublie's houseboat.

1 Defendants admit that during that interaction Ranger Wentz was, at times, located on
2 the gangplank connecting the houseboat and the beach and Ranger Phillipson was
3 located on the beach. Defendants deny the remaining allegations in paragraph 4.5 of
4 Plaintiff's Complaint.
5

6 4.6 Defendants admit that Ranger Wentz requested Mr. Sublie's identification
7 during the interaction. Defendants deny the remaining allegations in paragraph 4.6 of
8 Plaintiff's Complaint.
9

10 4.7 Defendants deny the allegations in paragraph 4.7 of Plaintiff's Complaint.

11 4.8 Defendants admit that Rangers Wentz and Phillipson repeatedly requested
12 that Mr. Hartinger and Mr. Riley return to the cabin of the houseboat and that Mr.
13 Hartinger eventually complied. Defendants deny the remaining allegations in paragraph
14 4.8 of Plaintiff's Complaint.
15

16 4.9 Defendants deny the allegations in paragraph 4.9 of Plaintiff's Complaint.

17 4.10 Defendants deny the allegations in paragraph 4.10 of Plaintiff's
18 Complaint.
19

20 4.11 Defendants admit that Ranger Wentz repeatedly requested that Mr. Sublie
21 remove his hands from his pockets and that neither Ranger informed Mr. Sublie that he
22 was under arrest at that point in the interaction. Defendants deny the remaining
23 allegations in paragraph 4.11 of Plaintiff's Complaint.
24

25 4.12 Defendants admit that Ranger Wentz grabbed Mr. Sublie's wrist at some
26 point during the interaction. Defendants deny the remaining allegations in paragraph
27 4.12 of Plaintiff's Complaint.
28

1 4.13 Defendants admit that Ranger Phillipson deployed pepper spray on Mr.
2 Sublie at some point during the interaction. Defendants deny the remaining allegations
3 in paragraph 4.13 of Plaintiff's Complaint.
4

5 4.14 Defendants admit that Ranger Wentz deployed his taser on Mr. Sublie at
6 some point during the interaction and that it did not properly connect with Mr. Sublie.
7 Defendants deny the remaining allegations in paragraph 4.14 of Plaintiff's Complaint.
8

9 4.15 Defendants admit that Ranger Phillipson fired his pistol at some point
10 during the interaction and that the bullet from Ranger Phillipson's gun struck Mr.
11 Hartinger. Defendants deny the remaining allegations in paragraph 4.15 of Plaintiff's
12 Complaint.
13

14 4.16 Defendants are currently without knowledge or information sufficient to
15 form a belief as to the allegations in paragraph 4.16 of Plaintiff's Complaint and
16 therefore deny the same pursuant to Rule 8(b) of the Federal Rules of Civil Procedure.
17

18 4.17 Defendants admit that Mr. Hartinger remained in the cabin of the
19 houseboat for a period of time after being shot. Defendants deny the remaining
20 allegations in paragraph 4.17 of Plaintiff's Complaint.
21

22 4.18 Defendants admit that Ranger Phillipson immediately attempted to inform
23 dispatch regarding the incident and that Ranger Wentz ordered Mr. Sublie off of the
24 houseboat multiple times and that Mr. Sublie eventually complied. Defendants deny the
25 remaining allegations in paragraph 4.18 of Plaintiff's Complaint.
26
27
28

1 4.19 Defendants admit that Ranger Wentz handcuffed Mr. Sublie while on the
2 beach. Defendants deny the remaining allegations in paragraph 4.19 of Plaintiff's
3 Complaint.
4

5 4.20 Defendants admit that Mr. Hartinger was air-lifted to Sacred Heart
6 Hospital in Spokane, Washington, where he received treatment for his gunshot wound.
7 Defendants deny the remaining allegations in paragraph 4.20 of Plaintiff's Complaint.
8

9 4.21 Defendants are currently without knowledge or information sufficient to
10 form a belief as to the allegations in paragraph 4.21 of Plaintiff's Complaint and
11 therefore deny the same pursuant to Rule 8(b) of the Federal Rules of Civil Procedure.
12

13 4.22 Defendants are currently without knowledge or information sufficient to
14 form a belief as to the allegations in paragraph 4.22 of Plaintiff's Complaint and
15 therefore deny the same pursuant to Rule 8(b) of the Federal Rules of Civil Procedure.
16

17 4.23 Defendants are currently without knowledge or information sufficient to
18 form a belief as to the allegations in paragraph 4.23 of Plaintiff's Complaint and
19 therefore deny the same pursuant to Rule 8(b) of the Federal Rules of Civil Procedure.
20

21 4.24 Defendants are currently without knowledge or information sufficient to
22 form a belief as to the allegations in paragraph 4.24 of Plaintiff's Complaint and
23 therefore deny the same pursuant to Rule 8(b) of the Federal Rules of Civil Procedure.
24

25 **V. CAUSES OF ACTION**

26 5.1 Defendants restate and re-allege their responses to paragraphs 1.1 through
27 4.24 above.
28

1 5.2 The allegations in paragraph 5.2 of Plaintiff's Complaint are conclusions
2 of law to which no answer is required. To the extent an answer is required Defendants
3 deny said allegations and put Plaintiff to his proof.
4

5 5.3 The allegations in paragraph 5.3 of Plaintiff's Complaint are conclusions
6 of law to which no answer is required. To the extent an answer is required Defendants
7 deny said allegations and put Plaintiff to his proof.
8

9 5.4 The allegations in paragraph 5.4 of Plaintiff's Complaint are conclusions
10 of law to which no answer is required. To the extent an answer is required Defendants
11 deny said allegations and put Plaintiff to his proof.
12

13 5.5 Defendants restate and re-allege their responses to paragraphs 1.1 through
14 5.4 above.

15 5.6 Defendants admit the allegations in paragraph 5.6 of Plaintiff's
16 Complaint.
17

18 5.7 Defendants admit the allegations in paragraph 5.7 of Plaintiff's
19 Complaint.
20

21 5.8 The allegations in paragraph 5.8 of Plaintiff's Complaint are conclusions
22 of law to which no answer is required. To the extent an answer is required Defendants
23 deny said allegations and put Plaintiff to his proof.

24 5.9 The allegations in paragraph 5.9 of Plaintiff's Complaint are conclusions
25 of law to which no answer is required. To the extent an answer is required Defendants
26 deny said allegations and put Plaintiff to his proof.
27
28

1 5.10 The allegations in paragraph 5.10 of Plaintiff's Complaint are conclusions
2 of law to which no answer is required. To the extent an answer is required Defendants
3 deny said allegations and put Plaintiff to his proof.
4

5 5.11 The allegations in paragraph 5.11 of Plaintiff's Complaint are conclusions
6 of law to which no answer is required. To the extent an answer is required Defendants
7 deny said allegations and put Plaintiff to his proof.
8

9 5.12 The allegations in paragraph 5.12 of Plaintiff's Complaint are conclusions
10 of law to which no answer is required. To the extent an answer is required Defendants
11 deny said allegations and put Plaintiff to his proof.
12

13 5.13 The allegations in paragraph 5.13 of Plaintiff's Complaint are conclusions
14 of law to which no answer is required. To the extent an answer is required Defendants
15 deny said allegations and put Plaintiff to his proof.
16

17 5.14 The allegations in paragraph 5.14 of Plaintiff's Complaint are conclusions
18 of law to which no answer is required. To the extent an answer is required Defendants
19 deny said allegations and put Plaintiff to his proof.
20

21 5.15 Defendants restate and re-allege their responses to paragraphs 1.1 through
22 5.14 above.
23

24 5.16 The allegations in paragraph 5.16 of Plaintiff's Complaint are conclusions
25 of law to which no answer is required. To the extent an answer is required Defendants
26 deny said allegations and put Plaintiff to his proof.
27
28

1 5.17 The allegations in paragraph 5.17 of Plaintiff's Complaint are conclusions
2 of law to which no answer is required. To the extent an answer is required Defendants
3 deny said allegations and put Plaintiff to his proof.
4

5 5.18 The allegations in paragraph 5.18 of Plaintiff's Complaint are conclusions
6 of law to which no answer is required. To the extent an answer is required Defendants
7 deny said allegations and put Plaintiff to his proof.
8

9 5.19 The allegations in paragraph 5.19 of Plaintiff's Complaint are conclusions
10 of law to which no answer is required. To the extent an answer is required Defendants
11 deny said allegations and put Plaintiff to his proof.
12

13 **VI. JURY DEMAND**

14 Defendants deny that Plaintiff is entitled to a jury trial under the Federal Tort
15 Claims Act. 28 U.S.C. § 2402.
16

17 **VII. PRAYER FOR RELIEF**

18 No response is required to the allegations in Plaintiff's prayer for relief. But to
19 the extent an answer is required Defendants deny the allegations and specifically deny
20 that Plaintiff is entitled to any relief.
21

22 **AFFIRMATIVE DEFENSES**

23 Further answering Plaintiff's Complaint, and as defenses thereto, Defendants
24 alleges as follows:
25
26
27
28

1 **FIRST DEFENSE**

2 To the extent Plaintiff's Complaint addresses allegations of negligence not
3 raised in an administrative claim properly presented to the appropriate federal agency,
4 they are barred. 28 U.S.C. § 2675(a). Plaintiff's recovery, if any, is limited to the
5 amount of an administrative claim which was properly presented to the appropriate
6 agency. 28 U.S.C. § 2675(b).
7

8 **SECOND DEFENSE**

9
10 Plaintiff's claims are subject to the limitations of the Federal Tort Claims Act
11 contained in 28 U.S.C. § 2680.
12

13 **THIRD DEFENSE**

14 Plaintiff's claims are barred by the discretionary function exception to the
15 Federal Torts Claims Act. 28 U.S.C. §§ 2680(h).
16

17 **FOURTH DEFENSE**

18 Plaintiff's Complaint fails to state a claim upon which relief can be granted
19 under the Federal Tort Claims Act because if Defendants were private persons, they
20 would not be liable to Plaintiff under Washington law.
21

22 **FIFTH DEFENSE**

23 The injuries and damages alleged in Plaintiff's Complaint were not actually or
24 proximately caused by or contributed to by any intentional, negligent, or wrongful act or
25 omission of Defendants or any agent, employee, or representative of the United States.
26
27
28

1 **SIXTH DEFENSE**

2 Plaintiff's injuries and damages, if any, were caused by the negligent acts or
3 omissions, wrongdoing, or failure to exercise due care on the part of others over whom
4 neither Defendants nor the United States has control.
5

6 **SEVENTH DEFENSE**

7 The liability of Defendants and responsible parties, named or unnamed, if any
8 should be apportioned according to their respective degrees of fault, and the liability of
9 these Defendants, if any, should be reduced accordingly.
10

11 **EIGHTH DEFENSE**

12 In the event Plaintiff is awarded a judgment against the United States, he is not
13 entitled to prejudgment interest, punitive damages, or to a jury trial under the Federal
14 Tort Claims Act. 28 U.S.C. § 2674.
15

16 **NINTH DEFENSE**

17 In the event Plaintiff is awarded attorney's fees against the United States for
18 services rendered in connection with this action, they shall not exceed 25 per centum of
19 the amount of any judgment. 28 U.S.C. § 2678.
20

21 **TENTH DEFENSE**

22 All future damages, if any, must be reduced to present value.
23

24 **ELEVENTH DEFENSE**

25 Plaintiff's damages, if any, must be reduced by the percentage of fault this Court
26 determines to be attributable to persons other than Defendants and the United States,
27
28

1 including but not limited to any and all rights to credit, offset, and/or contributions that
2 Defendants and the United States may have against Plaintiff.

3
4 **TWELFTH DEFENSE**

5 In the event Defendants are found to have been negligent, which negligence is
6 denied, the superseding and intervening negligence of third parties, for whom
7 Defendants and the United States cannot be held liable, broke any causal connection
8 between the negligence of the United States and the Plaintiff's alleged injuries.
9

10 **THIRTEENTH DEFENSE**

11 Plaintiff's claims against Defendants Wentz and Phillipson are barred by
12 absolute immunity. *See* 28 U.S.C. § 2679.
13

14 **FOURTEENTH DEFENSE**

15 Plaintiff's claims against Defendants Wentz and Phillipson are barred by
16 qualified immunity.
17

18 **FIFTEENTH DEFENSE**

19 Defendants reserve the right to any and all such affirmative defenses, or any
20 applicable state and federal statutes, as may become apparent in the course of discovery.
21

22 WHEREFORE, having fully answered Plaintiff's Complaint and having alleged
23 certain affirmative defenses, Defendants pray that Plaintiff's Complaint be dismissed
24 with prejudice, that Plaintiff take nothing by his Complaint, and that Defendants be
25 allowed costs and such other and further relief as the Court deems just and equitable.
26
27
28

1 DATED this 27th day of January, 2016.

2
3 Respectfully submitted,

4 ANNETTE L. HAYES
5 United States Attorney

6 s/ Kristin B. Johnson

7 KRISTIN B. JOHNSON, WSBA #28189

8 Assistant United States Attorney

9 700 Stewart Street, Suite 5220

10 Seattle, WA 98101-1271

11 Telephone No. (206) 553-7970

12 Fax No. (206) 553-4073

13 E-mail: kristin.b.johnson@usdoj.gov

14 Attorney for Defendants Wentz and Phillipson
15
16
17
18
19
20
21
22
23
24
25
26
27
28

CERTIFICATE OF SERVICE

I hereby certify that on January 27, 2016, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

Michael D. Franklin Mfranklin@lukins.com

And to the following non CM/ECF participants: N/A

s/ Wendy D. Campbell
WENDY D. CAMPBELL, Legal Assistant
United States Attorney's Office
700 Stewart Street, Suite 5220
Seattle, Washington 98101-1271
Phone: 206-553-7970
Fax: 206-553-4067
E-mail: wendy.campbell2@usdoj.gov